

## SEMINAR ON INTERLAY OF CIVIL AND CRIMINAL LAW

## Weeks 1 and 2: General Themes and Illustrative Examples

The first sessions of this seminar will broadly examine the legal distinctions (both substantive and procedural) between tort and crime and the theoretical and policy justifications for these distinctions. We will then turn our attention to the interplay of civil and criminal law as it arises in government enforcement policies, legal doctrine, and in the practice of law.

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Excerpt from Coffee, "Does 'Unlawful' Mean 'Criminal': Reflections on the Disappearing Tort/Crime Distinction in American Law," 71 <u>B.U.L. Rev.</u> 193-201 (1991)	1
Excerpt from K. Mann, "Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law, 101 <u>Yale L.J.</u> 1795 (1992)	10
Excerpt from A.S. Goldstein, "White Collar Crime and Civil Sanctions," 101 <u>Yale L.J.</u> 1895 (1992)	41
<u>Young v. United States ex rel Vuitton et Fils S.A.</u> , 481 U.S. 787 (1987)	47
<u>United States v. Ursery</u> , 518 U.S. 267 (1996)	65
<u>Schall v. Martin</u> , 467 U.S. 253 (1984)	107
<u>Payne v. Jones</u> , Dkt. No. 09-5201 (2d Cir., Oct. 3, 2012)	123

Weeks 3 and 4  
Civil and Criminal Enforcement Policies, Proceedings, and Caselaw

We now turn to the special challenges lawyers confront when the interplay of civil and criminal law arises in circumstances where one's client is entangled in parallel civil, criminal, and other proceedings.

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<u>United States v. Kordel</u> , 397 U.S.1 (1970)	153
<u>Baxter v. Palmigiano</u> , 425 U.S. 308 (1976)	166
<u>U.S. Securities and Exchange Commission v. Citigroup Global Markets</u> , (S.D.N.Y. Nov. 28, 2011)	199
Multiple Proceedings Chart	214
SEC Form 1662, Advice to Persons Supplying Information Voluntarily or Compulsorily	215
<u>SEC v. Gregory L. Reyes</u> , Dkt. No. 06-04435 (N.D. Cal. February 6, 2007)	220
<u>People v. Kehinde Jobi</u> , Ind. No. 862-2010 (N.Y.. Sup. Ct. October 22, 2012)	229
Motion for Protective Order, <u>U.S. ex rel. Alderson and Schilling v. HCA</u> , Dkt. Nos. 99-3289-90 (2002)	244

Week 5  
Tax Fraud – Civil Criminal

This session of this seminar will examine a form of misconduct, tax fraud, against which the Government sometimes proceeds civilly, sometimes criminally, and sometimes both. In addition to examining how and why such decisions are made, and some of the underlying policy assumption involved, the seminar will examine the limited restraints imposed by law on the implementation of such determinations, e.g., restrictions on the use of civil discovery demands to further criminal investigations and vice versa.

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26 U.S.C. Section 7201-7207	280
26 U.S.C. Section 7602	284
<u>United States v. Baggot</u> , 463 U.S. 476 (1983)	287
<u>United States v. Tenzer</u> , 127 F.3d 122 (2d Cir. 1997) (2d Cir. Sept. 19, 1997)	302
<u>Gerald B. Lefcourt, P.C. v. United States</u> , 125 F.3d 79 (2d Cir. 1997)	318
<u>United States v. Ratzlaf</u> , 510 U.S. 135 (1994)	328
IRS Revenue Manual: Balancing Civil and Criminal Cases	344
<u>United States v. Stein</u> , 435 F.Supp. 2d 330 (S.D.N.Y. 2006)	358

Week 6  
Antitrust Enforcement --  
Government (Civil and Criminal) and Private

We now add a third dimension by examining the antitrust laws, enforcement of which may be by criminal prosecution, civil proceedings instituted by the government, or treble damage lawsuits brought by private parties.

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Sherman Act, 15 U.S.C. Sections 1-7 and 15 (1990)	446
<u>Nash v. U.S.</u> , 229 U.S. 373 (1913)	451
<u>United States v. United Gypsum Co.</u> , 438 U.S. 422 (1978)	459
S. Hammond, "An Overview of Recent Developments in the Antitrust Division's Enforcement Program (Jan. 10, 2005)	490

Weeks 7-9  
 Securities Fraud --  
 Criminal, Civil (Public and Private)  
 and Administrative Enforcement

Turning to enforcement of the securities laws, we add a fourth dimension (administrative proceedings) to the already complex interplay of criminal and civil (public and private) proceedings.

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Securities Act of 1934 Act 17; Securities Exchange Act of 1934, Section 10; Securities Act of 1934, Rule 10b-5; Securities Exchange Act of 1934, Section 21, 32	502
<u>Chiarella v. United States</u> , 445 U.S. 222 (1980)	508
<u>United States v. Carpenter</u> , 484 U.S. 19 (1987)	528
<u>United States v. O'Hagan</u> , 117 S. Ct. 2199 (1997)	535
Rakoff "Willful Intent in Criminal Securities Cases," 21 <u>RICO L. Rep.</u> 1045 (1995)	564
<u>Aaron v. Securities Exchange Commission</u> , 100 S. Ct. 1945 (1980)	569
J. Markon and R. Schmitt, "Q & A: The In's and Out's of Insider Trading," <u>Wall Street Journal</u> , Oct. 4, 2003, p. C1	591

Weeks 10-12  
RICO  
State and Federal Criminal Predicates to Civil,  
Criminal and Government – Civil Actions

As the final segment of the seminar, we turn to the Racketeer Influenced and Corrupt Organizations Act, which uses state and federal criminal statutes as predicates for broadly sweeping civil, criminal and government civil actions, many of which are highly controversial. These materials trace the way courts have construed the substantive elements of RICO; the approaches courts have taken in the different contexts of criminal RICO prosecutions; government civil RICO actions; and private RICO litigation and some of the special problems for the administration of justice that RICO creates.

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Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-65	593
Excerpt from Lynch, "RICO: The Crime of Being a Criminal, Part I," 87 <u>Colum. L. Rev.</u> 661 (1987)	604
<u>United States v. Turkette</u> , 452 U.S. 576 (1981)	655
<u>McNally v. United States</u> , 483 U.S. 350 (1987)	673
<u>Sedima, S.P.L.R. v. Imrex Co., Inc.</u> , 473 U.S. 479 (1985)	701
<u>H.J. Inc. v. Northwestern Bell Tel. Co.</u> , 492 U.S. 229 (1989)	737
<u>Reves v. Ernst &amp; Young</u> , 494 U.S. 56 (1990)	745
<u>Anza v. Ideal Steel</u> , 126 S.Ct. 1991 (2006)	762
<u>Bridge v. Phoenix Bond Indemnity Co.</u> , 553 U.S. 639 (2008)	803